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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,594	08/13/2001	Luiz R. Duarte	41482/261574	7902

30559 7590 01/31/2005

CHIEF PATENT COUNSEL
SMITH & NEPHEW, INC.
1450 BROOKS ROAD
MEMPHIS, TN 38116

EXAMINER

SMITH, RUTH S

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,594

Applicant(s)

DUARTE ET AL.

Examiner

Ruth S Smith

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 18, 2005 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26-35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Castel or Kulow et al or Lewis Jr. Castel, Kulow et al and Lewis Jr each disclose an ultrasonic therapy method which can be used in the acceleration of wound healing. The steps set forth in the claims regarding the emission and reflection of ultrasound waves would be inherent in the use of the device on a human patient. The reflection of the waves and the angular offset toward a wound would be inherent in the use of the device on a patient in that both skin/tissue and bone present in the patient would inherently cause such reflections and change in direction of at least some of the ultrasonic waves. With regard to claim 30, based upon the known physiology of the treatment area, the angle would be predetermined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox (4,787,888) in view of Thompson et al or Pellico. Fox discloses an annular piezoelectric device used to deliver medicaments into the patient. Fox further discloses that it is well known to use ultrasound in wound healing. The medicament carrier used by Fox is known to be used in the treatment of wounds as seen for example in Pellico and Thompson et al. It is known to use a medicament to treat wounds as further disclosed by Pellico and Thompson et al. Therefore, it would have been obvious to one skilled in the art to use the bandage of Fox in the treatment of wounds and when the bandage is placed over a wound it would result in promoting the healing process of the wound both by the application of the ultrasound as it passes through the tissue and by the medicament used. The steps set forth in the claims regarding the emission and reflection of ultrasound waves would be inherent in the use of the device on a human patient. The reflection of the waves and the angular offset toward a wound would be inherent in the use of the device on a patient in that both skin/tissue and bone present in the patient would inherently cause such reflections and change in direction of at least some of the ultrasonic waves. With regard to claim 30, based upon the known physiology of the treatment area, the angle would be predetermined. With regard to claim 36, at least some of the waves will propagate through at least some layers of tissue to contact the wound being treated.

Response to Arguments

Applicant's arguments with respect to claims 26-37 have been considered but are moot in view of the new ground(s) of rejection. The examiner does not agree with applicant's remarks regarding the inherent features of the prior art references cited. As previously stated by the examiner, the reflection of the waves and the angular offset toward a wound would be inherent in the use of the device on a patient in that both

skin/tissue and bone present in the patient would inherently cause such reflections and change in direction of at least some of the ultrasonic waves.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S Smith whose telephone number is (571) 272-4745. The examiner can normally be reached on M-F 7:30 AM- 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S Smith
Primary Examiner
Art Unit 3737

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